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June 4, 2002

Ms. Karen Getman
Chair, and Commissioners
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Re: Proposed Emergency Regulation 18572.2

Dear Chairperson Getman and Commissioners:

This firm represents the Institute of Governmental Advocates ("IGA"), a trade association representing the interests of registered lobbyists, lobbying firms and lobbyist employers in California. This letter is prompted by the staff's memorandum concerning proposed emergency regulation section 18572.2 dated June 23, 2002.

While we might debate the policy behind the proposed regulation, I do not believe there is any statutory basis for the interpretation proposed.

First, as I have previously stated the statutory change in the language from the two most recent provisions prohibiting contributions by lobbyists is significant. More importantly, it is legally relevant.

The Proposition 208 version of the rule (section 85704) banned contributions "from, through, or arranged by a registered state lobbyist...." When Proposition 34 was enacted it specifically changed this provision (now section 85702) to prohibit a candidate or officeholder from receiving a contribution "from a lobbyist." It is evident from the face of these two provisions that the legislature and the voters repealed specific language in Prop. 208. None of the ballot materials referenced in the staff memorandum supports any other conclusion.

More importantly, the term “from a lobbyist” had a specific meaning at the time Proposition 34 was drafted and adopted. The Commission defined the term to mean “made from a lobbyist’s personal funds or resources...” (2 Cal. Code of Regs., § 18626(a)(1).) Both the legislature and voters are presumed to know the meaning of the defined terms when those terms are used in new legislation. In fact, this regulation remained “on the books” for nearly 6 months after Proposition 34 became operative.¹

Second, a careful comparison of the structure and format of section 85702 with other sections of Proposition 34, helps illustrate how the language in section 85702 must be interpreted. For example, in section 85301, the provisions limiting contributions made to and accepted by a candidate are structured so that each subsection (*i.e.* 85301(a), 85301(b), etc.) contains one provision; one restriction or rule. Each subsection merely describes both ends of the same transaction.

Section 85301 states:

A person... ***may not make*** to any candidate for elective state office... ***and*** a candidate for elective state office... ***may not accept*** from a person, any contribution totaling more than three thousand dollars (\$3,000) per election. (emphasis added).

In comparison section 85702 states:

An elected state officer or candidate... ***may not accept*** a contribution from a lobbyist, ***and*** a lobbyist ***may not make*** a contribution to an elected state officer or candidate... .

Proposition 34 contains numerous examples of this (§§ 85302(a),(b), and (c); 85303(a) and (b)) and it follows that section 85702 should be read in a similar fashion — as one provision, not two.

Finally, the staff memorandum mis-characterizes the record concerning IGA’s arguments in the recent case regarding section 85702. In *Institute of Governmental*

¹ The statutory references in the former regulation were incorrect since it was interpreting a provision of Proposition 208 which was numbered differently.

Letter to Chairperson Getman and Commissioners

June 4, 2002

Page 3

Advocates v. F.P.P.C., IGA argued that a lobbyist should have the freedom to contribute his or her own personal funds to certain candidates up to the same contribution limit applicable to every other "person." IGA argued that the **fact** that a lobbyist could deliver a client's contribution, but could not make his or her own contribution evidenced that the contribution ban did not serve a compelling government interest.

The only important point to raise concerning the prior litigation is that at no point in the proceedings or the pleadings did the Commission ever suggest that the underlying premise (namely that a lobbyist could in fact deliver the contribution of another) was faulty or untrue.

I hope that you find this information is useful in considering the proposed emergency regulation. I believe the proposal is a vast departure from the limited scope of section 85702. Should you have any questions or require additional information, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in cursive script, reading "Thomas W. Hiltachk", followed by a small mark that appears to be "cm".

Thomas W. Hiltachk

TWH:lc